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	3	LESLIE N. WILDER	CROSS/ RECROSS
	4	By Mr. Barry	4
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APPEARANCES:			
	1	P-R-O-C-E-E-D-I-N-G-S	
FINNERAN, BYRNE & DRECHSLER, LLP (By Jonathan E. Tobin, Esq.) 50 Redfield Street Boston, Massachusetts 02122 On behalf of the Plaintiff	2	At the offices of Sugarman, Rogers, Barshak & Cohen, P.C., 101 Merrimac Street	
	3	Boston, Massachusetts, on Monday, March 27,	
	4	2006, commencing at 10:26 a.m.	
	5		
SUGARMAN, ROGERS, BARSHAK & COHEN, P.C. (By David A. Barry, Esq. and Suleyken D. Walker, Esq.) 101 Merrimac Street Boston, Massachusetts 02114 On behalf of the Defendant	6	STIPULATIONS	
	7	It is hereby stipulated and agreed	
	8	by and between counsel for the respective	
	9	parties that the reading and signing will	
	10	not be waived. The sealing and filing are	
	11	waived.	
Also Present Lennart Gustafsson George P. Libbates, Videographer	12	It is further stipulated and agreed	
	13	that all objections, except objections to	
	14	the form of the questions, and motions to	
	15	strike will be reserved until the time of	
	16	trial.	
	17	LESLIE N. WILDER,	
	18	being first duly sworn, was examined and	
	19	testified as follows:	
	20	DIRECT EXAMINATION	
	21	BY MR. BARRY:	
	22	Q. Would you tell us your name, please, sir?	
	23	A. I'm Leslie Wilder, L-E-S-L-I-E, W-I-L-D-E-R.	
	24	Q. Where do you live, Mr. Wilder?	
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1 12:45. We're off the video record.
 2 (Discussion off the record.)
 3 (Luncheon recess.)
 4 MR. BARRY: We did receive on
 5 Friday early afternoon I think it was what
 6 has been marked as Exhibit 4, which is
 7 Mr. Wilder's March 24th, 2006 letter to you
 8 addressing a different possible accident
 9 scenario and also a different potential
 10 alleged defect having to do with the
 11 interlock.

12 I take the position and will take
 13 the position with the court that that
 14 disclosure did not comply with the relevant
 15 rules. We don't have to argue about that
 16 now. That's a legal matter, but I just want
 17 it clear on the record that the fact that I
 18 am now put in a position where I have to ask
 19 Mr. Wilder about this, and have done so and
 20 will continue to do so, doesn't mean that
 21 the defendant is waiving its right to object
 22 obviously to the late disclosure of this new
 23 opinion. That's my speech on the record and
 24 we'll obviously address that with the court.

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(Reporter read back.)

1 Q. When you demonstrated just before the break,
 2 Mr. Wilder, how it might be possible to
 3 inadvertently activate the saw, can you tell
 4 me in words what you were doing? I
 5 understand it was videoed, but how did you
 6 accomplish that demonstration, if you could
 7 describe that now in words?

8 A. Well, basically -- let me preface it by
 9 saying it's not the only way in which I
 10 think the interlock could be inadvertently
 11 depressed, but it is -- what I did is
 12 transfer the saw from the weight being
 13 carried by my left hand as the plaintiff was
 14 presumably going down the ladder and
 15 momentarily took the weight off the left
 16 hand by using my right hand on the forward
 17 handle, and then grabbing the saw with my
 18 left hand at the handle, at the rear handle
 19 while letting go with my right hand.

20 And in doing so, what I was showing
 21 is that it was possible for the weight as it
 22 went from my right hand to my left hand to
 23 be supported partially by the side of my

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1 forefinger up against the interlock. And
 2 you asked me whether I deliberately did it
 3 or -- well, obviously the demonstration was
 4 to show that it could be done, and so I
 5 showed that it could be done.

6 I saw on the video that the Swedish
 7 gentleman, he had the saw -- he did
 8 something similar, except he kind of tossed
 9 the saw from his right hand to his left hand
 10 and kind of caught it, so that the weight of
 11 the saw was then applied in a downward
 12 position to his left hand showing that it
 13 could be inadvertently actuated that way.

14 And he also triggered it several
 15 times with the saw held down at his side
 16 with just one hand, which is another way
 17 which it could be inadvertently triggered,
 18 and I'm just saying it is possible to
 19 inadvertently trigger the interlock.

20 And because of the weight of the
 21 saw you have quite a firm grip on that
 22 handle and with the grip and especially if
 23 you're wearing gloves, because I did try it
 24 with heavy gloves as well -- not here -- it

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1 becomes much easier to hit that interlock
 2 because the gloves take up more space within
 3 the handle.

4 Q. When you demonstrated how it was possible to
 5 inadvertently start the saw here before the
 6 video camera was one of your fingers
 7 exerting a force in one direction on the
 8 trigger lock and another finger or part of
 9 your hand exerting a force in an opposite
 10 direction on the trigger?

11 A. Well, the two are not in opposition. If
 12 anything, I'd say one is more at right
 13 angles to the other. The interlock moves
 14 fore and aft and the trigger essentially
 15 moves at right angles to it, even though
 16 it's on an arc.

17 What really happens is that your
 18 hand is now preparing to carry the weight of
 19 the saw and in carrying the weight of the
 20 saw there is an opening in the handle that
 21 your hand comes into and supports the weight
 22 of the saw. And if you were to hold the saw
 23 completely horizontal and just grasp it that
 24 way, then you probably would not hit the

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1 interlock. If you hold it completely
 2 vertical it's almost certain the interlock
 3 would be depressed, and somewhere in the
 4 middle then starts the dynamics of how your
 5 hand reaches into the handle and when you
 6 grasp it, exactly which way the force is
 7 applied.

8 The trigger and the plunger are
 9 very close together. So, getting one finger
 10 up against both of them, if that's what I
 11 did -- it's hard to say because the
 12 forefinger and the next middle finger both
 13 can grip the trigger. I don't believe I
 14 used my middle finger to actuate it at that
 15 point, but it was unconscious.

16 Q. But it was your forefinger that was
 17 actuating the trigger lock?

18 A. Yes.

19 Q. And what part of your hand or what finger
 20 was actuating the trigger?

21 A. I think it was my forefinger as well as my
 22 middle finger, but I can't be sure how much
 23 force was on each, because both of them will
 24 straddle, can straddle the trigger.

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1 Q. When you said if you're holding the saw
 2 vertical it's almost certainly to
 3 inadvertently activate the saw?

4 A. If you're holding the saw with the blade up.

5 Q. That exactly was going to be my question.

6 A. Yes. If in the transfer of the saw it winds
 7 up being held vertically at one point, then
 8 the weight of the saw is resting on the hand
 9 that's in the rear handle and the weight
 10 will cause the plunger to depress.

11 Q. But Mr. Watson wouldn't have been holding
 12 the blade up, would he?

13 A. I don't know how he transferred it. He may
 14 have, and again in the videos here I can't
 15 remember which gentleman -- some people
 16 transferred it one way. There were several
 17 people transferring it. Some kind of
 18 flipped it -- I think there was a young man
 19 in probably one of Dr. Funk's, if I
 20 recollect correctly, demonstrations, he was
 21 kind of -- when he grabbed the saw in his
 22 left hand, he actually kind of tossed it up
 23 in the air a little bit and flipped his hand
 24 around.

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1 So, there is any number of ways in
 2 which somebody could have transferred or
 3 moved or supported the saw, and I can't be
 4 sure how, except to show that with the two
 5 items right in close proximity and in
 6 proximity to where your hand would actually
 7 grasp the saw to carry it, you can actuate
 8 it. And it's designed that way, so that you
 9 don't need to move too far away from where
 10 you are to actuate it. That doesn't make
 11 sense.

12 Q. No, no, no. It makes sense to me. Do you
 13 have any information one way or another as
 14 to whether the trigger lock was operative
 15 and functioning as it was intended to
 16 function on the day of Mr. Watson's
 17 accident?

18 A. Only by presuming that if it wasn't, that
 19 might have come out in some way, but I have
 20 no knowledge.

21 Q. One way or another?

22 A. One way or another.

23 Q. Have you heard of a practice in the
 24 construction industry of defeating the

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1 trigger lock, some workers defeating the
 2 trigger lock by taping it in the depressed
 3 position, so that it is not necessary each
 4 time one wants to activate the saw to press
 5 on the trigger lock, or either taping it or
 6 just defeating it, removing it? Have you
 7 heard of that, such a practice?

8 A. Well, I can tell you that I've heard of that
 9 sort of practice in connection with other
 10 safety devices on other machines. I don't
 11 know of any specific practice with respect
 12 to this saw, and in looking at the saw, I'd
 13 say it would be probably difficult to do.

14 Q. To tape it?

15 A. To tape it so that it will stay depressed.
 16 I'm not saying -- it's not impossible. It's
 17 just looking at it, one would have to wrap
 18 tape around this way, and eventually I think
 19 the tape would stretch or peel off and the
 20 trigger lock would -- I don't know whether
 21 it's done or not. I'm not aware of any
 22 practice. I can say that some people in
 23 some instances have been known to defeat
 24 safety devices.

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1 Q. Would it be difficult to defeat the trigger
 2 lock by removing it?
 3 A. I did not open up this saw, so I don't know.
 4 I mean it probably could have been removed
 5 or bypassed or something, but again I'd have
 6 to open it and see what the mechanism looked
 7 like, and I haven't done that.
 8 Q. If the trigger lock were defeated in some
 9 way, it would be easier to inadvertently
 10 start the saw than if it were functioning
 11 properly, correct?
 12 A. Yes.
 13 Q. If that had happened -- and I understand
 14 that you're not saying that it did -- and
 15 Mr. Watson had inadvertently activated the
 16 saw, that wouldn't be a design problem with
 17 the saw, would it, if somebody had defeated
 18 the interlock?
 19 A. That's correct.
 20 Q. Now, you didn't have an opportunity to
 21 examine the saw that was involved in
 22 Mr. Watson's accident?
 23 A. Correct.
 24 Q. The actual saw?

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1 Q. You agree with me that if the trigger lock
 2 had been defeated, it would be easier then
 3 if the trigger lock were functioning
 4 properly to inadvertently activate the saw?
 5 A. On this particular saw, yes.
 6 Q. On this particular saw?
 7 A. Yes.
 8 Q. And if that had happened ---
 9 MR. TOBIN: That?
 10 Q. Somebody had -- if, in fact, the trigger
 11 lock had been defeated before Mr. Watson's
 12 accident and, in fact, he had inadvertently
 13 activated the saw, the cause of the
 14 inadvertent activation wouldn't be a design
 15 problem with the trigger lock. It would be
 16 the fact that somebody had defeated it,
 17 correct?
 18 A. I don't know that I can answer that question
 19 yes or no, because I then have to consider
 20 whether or not the whole handle could have
 21 been configured such that even if the
 22 trigger lock were removed that the trigger
 23 would be less susceptible to actuation.
 24 But I would have to agree with you

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1 A. I want to think about that last answer just
 2 a little more for a second, and I haven't
 3 given it any consideration at this point
 4 because the interlock did exist, but there
 5 are ways to design triggers to make them
 6 less susceptible to inadvertent operation,
 7 and that would be some sort of a barrier
 8 nearer the trigger, so that you can't bump
 9 it accidentally.

10 And given what you've said, if we
 11 take this particular saw, as it is designed
 12 and remove the interlock, I would say yes,
 13 the trigger would be more easily actuated,
 14 but it's not, it should not be meant to be
 15 construed as in general that removing an
 16 interlock always makes it much more -- let
 17 me change that.

18 I'm saying in general triggers
 19 could be designed so that they're configured
 20 with respect to the handle, so that they are
 21 less susceptible to being actuated. This
 22 one is not.

23 Q. I'm not sure I understand that answer.
 24 A. Okay.

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1 that once the trigger lock is removed
 2 regardless of what kind of design there was,
 3 it only stands to reason that it could be
 4 more easily inadvertently actuated, but as I
 5 said, this one does not have any other
 6 protective design about that handle and the
 7 trigger, and this trigger is completely
 8 exposed.

9 So, if the interlock was not there,
 10 the trigger would be more susceptible to be
 11 inadvertently triggered. That's a long way
 12 of saying it.

13 Q. I was asking you about the fact that you
 14 never had an opportunity to examine the
 15 actual saw; am I correct about that?

16 A. That's correct.

17 Q. As an engineer would you like to have had
 18 the opportunity to inspect the actual saw
 19 involved in Mr. Watson's accident?

20 A. Yes. It's always good to see the subject
 21 piece of equipment, yes.

22 Q. Why would you have wanted to see the
 23 equipment itself?

24 A. Well, my tests were done on an exemplar. I
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1 don't know how well used the saw was that he
 2 was using. It may very well have been that
 3 the bearings had worn in very well. The saw
 4 was loose and a coastdown time might have
 5 exceeded 20 seconds instead of 15 seconds if
 6 the saw was very free and easy.

7 I would certainly want to see
 8 whether the interlock was functioning,
 9 whether the trigger functioned or whether
 10 there was anything else unusual that I don't
 11 see from the exemplar.

12 Q. An opportunity to inspect the saw might have
 13 permitted you to come to a more informed
 14 opinion as to how Mr. Watson's accident
 15 occurred?

16 A. I don't know that it would have, because I
 17 think some of the circumstances of the
 18 accident are just unknown.

19 Q. Do you agree, Mr. Wilder, that if
 20 Mr. Watson's accident had happened while the
 21 blade was still coasting after he had
 22 initially turned it off following completion
 23 of his cut and without his inadvertently
 24 activating the saw, then under that

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1 Q. If Mr. Watson had inadvertently activated
 2 the saw and then released the trigger so
 3 that it turned off at some point, would you
 4 expect him to recall that?

5 MR. TOBIN: Objection.

6 A. Actually, I don't know how I can answer what
 7 would have happened in his mind, but he did
 8 indicate that he was wearing earplugs and
 9 that it was a noisy environment and that I
 10 suspect he would not have been aware at some
 11 point as to whether the saw was actually
 12 running or not running or coasting or not
 13 coasting.

14 Q. If he inadvertently activated the saw and
 15 then released his trigger, the trigger on
 16 the saw, you have no idea how long the blade
 17 was coasting before it struck and injured
 18 him, do you?

19 A. I don't think there is any way for anybody
 20 to make that assessment.

21 Q. And that's not something you know?

22 A. Certainly, I couldn't.

23 Q. Let's talk about the design of the saw with
 24 respect to the fact that it doesn't have a

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1 circumstance the design of the trigger lock
 2 would not have played any causal role in his
 3 accident?

4 A. If it had just been coasting down?

5 Q. Correct.

6 A. Yes.

7 Q. You agree with me?

8 A. Yes.

9 Q. And conversely, if his accident had happened
 10 after he did inadvertently activate the saw
 11 and while the saw was under full power, then
 12 the lack of an electric brake or blade brake
 13 would not have played any causal role in the
 14 accident, correct?

15 A. Yes.

16 Q. I think you told me earlier that you can't
 17 say to a reasonable degree of engineering
 18 certainty which of these two accident
 19 scenarios was the one that he actually had,
 20 correct?

21 A. Or some combination.

22 Q. Or some combination or some other one,
 23 correct?

24 A. Yes, I agree.

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1 blade brake on it. In your report marked
 2 Exhibit 1 you only discuss blade brakes on
 3 other types of power saws, that is other
 4 than power cutters. For example, you
 5 mentioned circular saws and mitre saws; is
 6 that correct?

7 A. Yes.

8 Q. Why is that? Why did you discuss other
 9 types of saws and not power cutters when you
 10 were discussing saws with blade brakes?

11 MR. TOBIN: Note my objection to
 12 the question. The report is about putting a
 13 blade brake on a power cutter. What do you
 14 mean by your question?

15 MR. BARRY: Let me shortcut it.

16 Q. Is it because you couldn't find any power
 17 cutters as opposed to circular saws or mitre
 18 saws that had blade brakes?

19 A. No.

20 Q. That's not why?

21 A. That's not why.

22 Q. If there are power cutters saws that are
 23 similar to the saw Mr. Watson was using that
 24 had or have blade brakes, wouldn't it have

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<p>101</p> <p>1 been a more meaningful comparison to talk 2 about power cutters with blade brakes than 3 to talk about circular or mitre saws with 4 blade brakes?</p> <p>5 A. I'm not sure it would be more meaningful. 6 The comment element is that these saws all 7 use electrically operated motors that are 8 susceptible to being braked electrically. 9 I'm sure they probably all use a series or a 10 universal motor and it really doesn't matter 11 whether it's a polishing wheel or an 12 electric saw that's a hand-held circular 13 saw, or as the Makita saw has a timber saw, 14 a very large circular saw.</p> <p>15 They all have the common element of 16 an electric motor and a cutting implement 17 that spins, and the issue was whether or not 18 they could technologically and economically 19 and feasibly be braked, and I was just 20 looking for examples that were for sale to 21 illustrate that blade braking is technically 22 and economically feasible, and I don't see 23 that there is any distinction to be made 24 between a power cutter and the saws that I</p>	<p>103</p> <p>1 of time on that, because it looked, at least 2 on the face of it, as if it would have been 3 difficult or impossible to implement. So, I 4 didn't go any further in that direction.</p> <p>5 Q. And you're not purporting to offer such an 6 opinion at the trial of this case that it 7 was defective, because it didn't have a 8 lower retractable blade guard, are you?</p> <p>9 A. No.</p> <p>10 Q. Are power cutters such as the one Mr. Watson 11 was using generally used by the same 12 category of users as are portable circular 13 saws and mitre saws?</p> <p>14 Q. That's a tough question to answer, because 15 the user is really defined by what the 16 project is, and most circular saws that I'm 17 familiar with would span the population from 18 home owner, do-it-yourselfers, to 19 professional tradesmen, where I think power 20 cutters I think are probably almost always 21 used by professional -- not professional, 22 but people that are dedicated to commercial 23 use.</p> <p>24 Q. Maybe that's another way of saying it. The</p>
<p>SHEA COURT REPORTING SERVICES (617) 227-3097</p>	<p>SHEA COURT REPORTING SERVICES (617) 227-3097</p>
<p>102</p> <p>1 referred to.</p> <p>2 Q. Does the environment in which the different 3 types of saws are used have any affect on 4 whether in your opinion they should have 5 blade brakes or not?</p> <p>6 A. Yes, to a degree.</p> <p>7 Q. To what degree?</p> <p>8 A. Well, the other saws that we talked about or 9 I talked about in my report typically had 10 lower guards, so that when you were done 11 with your cut the blade was protected by a 12 spring-loaded guard. Power cutters, because 13 of the way they're used, tend not to be 14 susceptible to having a retractable guard. 15 I would think a power cutter needs a blade 16 brake even more than these other saws.</p> <p>17 Q. While we're on the guarding issue, you're 18 not saying that the power cutter was 19 defectively designed because it didn't have 20 a different type of blade guard, are you?</p> <p>21 A. If I thought about it long enough and could 22 come up with a design that I thought was 23 feasible, then I might say yes, it needed a 24 retractable guard, but I didn't spend a lot</p>	<p>104</p> <p>1 type of power cutter that Mr. Watson was 2 using is designed to be used by the 3 professional user, not the home owner, 4 do-it-yourselfer, correct?</p> <p>5 A. I don't think it's specifically designed to 6 be used by a professional user. I think it 7 is what it is, and it tends to be used by 8 professional users, just because that's the 9 nature of what they're used for.</p> <p>10 Q. Would that have any affect on whether you 11 think there is a type of person who 12 generally uses power cutters? Would that 13 have any bearing on whether you think power 14 cutters should come with blade brakes or 15 not?</p> <p>16 A. I haven't really considered that except to 17 the degree that I'd say offhand right now 18 without much more thinking I see a lot of 19 accidents with all sorts of saws and very 20 often it's the professional tradesmen, 21 because of their familiarity or long-time 22 exposure to these saws that make them more 23 at risk than the average do-it-yourselfer.</p> <p>24 Q. When did you first reach an opinion that</p>
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1 power cutters without blade brakes are
 2 defectively designed?
 3 A. Well, shortly after I looked at the saw and
 4 realized what it was and how it was used,
 5 the thought -- I was very familiar with the
 6 use of blade brakes on other saws, and
 7 almost as soon as I realized what the
 8 circumstances of the accident were I came to
 9 a conclusion that it's very likely that a
 10 blade brake would have mitigated or
 11 eliminated the possibility of the accident.
 12 Q. So, the first time you came to that
 13 conclusion was in connection with your work
 14 on this case?
 15 A. Well, I have come to the conclusion that
 16 blade brakes are an important safety device
 17 well before this case.
 18 Q. With respect to power cutters, is it fair to
 19 say that the first time that you came to a
 20 conclusion that all power cutters, if they
 21 don't have blade brakes, are defectively
 22 designed is in connection with your work on
 23 this case?
 24 A. I had not considered power cutters as a

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1 A. Yes.
 2 Q. You had previously come to opinions that
 3 other types of power saws are defective
 4 because they lack blade brakes?
 5 A. Yes.
 6 Q. When did you first come to that opinion with
 7 regard to any power saw?
 8 A. I simply don't remember.
 9 Q. Have you ever advised any government or
 10 industry group of your opinion that power
 11 saws without blade brakes are defective and
 12 dangerous?
 13 A. No.
 14 Q. Have you done any research to determine the
 15 frequency of coasting blade accidents with
 16 power cutters like the one Mr. Watson was
 17 using?
 18 A. No.
 19 Q. Are you aware of any empirical data that
 20 shows the extent to which, if any, that the
 21 coasting blade represents a hazard to an
 22 experienced user of a power cutter?
 23 A. Other than Dr. Funk's testing, I think it's
 24 obvious on the face of it that there is a

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1 separate entity before this case.
 2 Q. So, the first time you came to that
 3 conclusion with regard to power cutters is
 4 in connection with your work on this case?
 5 A. Well, I don't see the power cutter as much
 6 different than an ordinary hand-held saw,
 7 except to the extent that it doesn't have
 8 this additional -- it's heavier, beefier,
 9 maybe a little harder to handle, but it
 10 doesn't have the retractable guard, and
 11 that's the only distinction. I did not say
 12 power cutters are a different animal.

13 When I got this particular
 14 investigation and thinking about it, the
 15 more I thought about it the more I realized
 16 blade brakes certainly could have been and I
 17 suspect in the future will be applied to
 18 this class of tool.

19 Q. Your opinion that you express in Exhibit 1
 20 that the power cutter that Mr. Watson was
 21 using was defective because it lacked a
 22 blade brake, that was an opinion that you
 23 arrived at in connection with and for the
 24 purposes of this litigation, correct?

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1 hazard.
 2 Q. What I'm trying to distinguish is the hazard
 3 that's presented by a coasting blade of a
 4 power cutter. Are you aware of any data or
 5 statistics or empirical evidence that
 6 indicates the extent to which coasting
 7 blades on power cutters have hurt people?
 8 A. I'm not aware of any statistics or of any
 9 studies that have put that kind of data
 10 together.
 11 Q. Did you consider it important to know the
 12 degree to which, if any, a power cutter is
 13 dangerous to an operator without a blade
 14 brake before coming to the conclusion that
 15 it requires a blade brake?
 16 MR. TOBIN: I'm not sure I
 17 understand.
 18 A. Would you say that again, please?
 19 Q. It was an awkward question. Did you
 20 consider it important to know the extent to
 21 which, if any, a coasting blade on a power
 22 cutter represents a danger to the operator
 23 before you came to the opinion that power
 24 cutters need to have blade brakes?

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1 marked for identification.)
 2 (Exhibit No. 6 Handwritten Notes
 3 marked for identification.)
 4 (Exhibit No. 7 Handwritten Notes
 5 marked for identification.)
 6 (Exhibit No. 8 Handwritten Notes
 7 marked for identification.)
 8 (Exhibit No. 9 Handwritten Notes
 9 marked for identification.)
 10 (Exhibit No. 10 Handwritten Notes
 11 marked for identification.)
 12 Q. Would you identify the two pages of notes
 13 that we've marked Exhibit 5 which we have
 14 copied from your original file?
 15 (Document handed to witness.)
 16 A. Yes.
 17 Q. What are they?
 18 A. One of them is, has a line at the top that
 19 says 9/26 Tobin Watson, the other page of
 20 which is associated with it, has kind of a
 21 picture of a rectangle with a small M in the
 22 middle of it at the top of the page.
 23 Q. When did you prepare those notes?
 24 A. Approximately 9/26, September 26th, 2005.

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1 Q. Just before your report, your September 29th
 2 report?
 3 A. Yes. It may have been at the time that I
 4 was writing the report. I'm not sure.
 5 Q. I guess on the photocopy the date ---
 6 A. There is no date on the one that has the
 7 rectangle.
 8 Q. But the 9/26 got cut off.
 9 A. You're seeing the balance of it. You see
 10 the 26th. It was September 26th.
 11 Q. So, it's September 26th up in the upper
 12 left-hand corner on the first page of
 13 Exhibit 5?
 14 A. Yes.
 15 Q. What do those calculations represent?
 16 A. They were just an attempt to estimate
 17 whether or not the Partner or if a 12- or
 18 14-inch blade on a Partner saw could have
 19 been stopped in about the same time as the
 20 Dewalt blade. Not the Dewalt blade, but the
 21 Dewalt test that I did with two steel blades
 22 stopped, which was just a little under two
 23 seconds, and it was just a rough
 24 confirmation that had the motor had the same

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1 kind of braking effect that the Dewalt motor
 2 had, either a 12- or 14-inch blade would
 3 have stopped in approximately two seconds or
 4 could have been made to stop in about two
 5 seconds also.

6 Q. Did you discuss your work to determine the
 7 stopping time of a blade with a blade brake
 8 on a Partner saw with any other engineer?
 9 A. No.

10 Q. Maybe you can just tell me how you went
 11 about figuring out based on the stopping
 12 time of the blade in a mitre saw how you
 13 felt, how quickly you felt the blade brake
 14 in a power cutter would have stopped the
 15 blade?

16 A. Yes. Let me try to do it by way giving an
 17 analogy if I can. It may be easier to
 18 describe. Picture a car that has a set of
 19 wheels on it and a set of brakes on the
 20 wheels and you step on the brakes and the
 21 car will stop in 50 feet or 10 seconds or
 22 whatever it is. And now, if you would like
 23 to know given the same sort of technology
 24 for brakes how long would a heavier car or a

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1 lighter car going at either somewhat faster
 2 or slower speeds could be made to stop.
 3 And that's essentially what I did.
 4 Instead of it being a linear speed where a
 5 body is moving in a straight line and you're
 6 dragging it to a stop, this is a product
 7 that is spinning, and that's an analogy.

8 What I did is I looked at the
 9 Dewalt saw that had I believe a 12-inch
 10 steel blade on it and I replaced the steel
 11 blade with two -- I don't have my numbers
 12 here, but I think with two 10-inch steel
 13 blades. I bolted them on to the Dewalt saw
 14 instead of the saw blade that was on there
 15 originally, and I saw how fast it came to a
 16 stop, and it was just under two seconds.

17 Q. That was slower than it would have stopped
 18 with the single blade?

19 A. I think so, yes. Basically, I then said
 20 that represents, given the Dewalt saw's
 21 speed, that represents the braking power of
 22 the motor. Now, let's apply that braking
 23 power of the motor to a 12- or 14-inch
 24 abrasive blade, instead of the two 10-inch

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1 my testing of the coast time down, that was
 2 done on 6/21/05 when I measure the coastdown
 3 time. Then I have three other dates, 9/13,
 4 9/25 and 9/22 of 2005 when I had
 5 opportunities to examine some other saws and
 6 I wrote down the coasting down times with
 7 and without braking on those saws.

8 Q. In your examination of other saws in
 9 connection with this case did you ever look
 10 at any portable power cutters comparable to
 11 the one that Mr. Watson was using?

12 A. As I said before, I think every one of these
 13 is comparable, in that it uses a universal
 14 motor and it drives a blade. I don't see
 15 that the fact that it has or hasn't got a
 16 lower guard or that it's held one way or
 17 another way or it uses an abrasive blade
 18 versus a steel blade as being of any
 19 significance in looking at the braking.

20 Q. Let me see if I can get a yes or no answer
 21 to my question. Did you look at -- you
 22 understand what a power cutter is?

23 A. I think what I understand a power cutter to
 24 be is a saw similar to this one that does

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1 not have a retractable lower guard that is
 2 used in abrasive cutting rather than cutting
 3 wood.

4 Q. Taking that definition of a power cutter,
 5 did you look at any other power cutters in
 6 connection with your work on this case?

7 A. No.

8 Q. Would you identify Exhibit 9, please?
 9 (Document handed to witness.)

10 A. That was done, if I could find my note.

11 Q. I'm going to ask you the date.

12 A. I don't know what the date is. It says up
 13 there. It was my notes to myself based on
 14 my own climbing up and down a ladder and
 15 checking the time it took me to go through
 16 the motions that Mr. Watson had described,
 17 and I'll look for that.

18 Q. Can you pull out the original?

19 A. I can certainly try.

20 (Discussion off the record.)

21 A. It was 9/23/05.

22 Q. The date of Exhibit 9, right?

23 A. Yes.

24 Q. So, you did that -- this is the accident

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1 reconstruction climb down test where you
 2 were timing how long it took to climb down
 3 the ladder from the fifth or sixth rung
 4 where Mr. Watson said he was?

5 A. Yes.

6 Q. As you testified earlier, you got about nine
 7 seconds?

8 A. Yes.

9 Q. That was done before your report obviously?

10 A. Yes. That's Exhibit 9?

11 Q. Yes.

MR. BARRY: Mark that.

(Exhibit No. 13 ANSI B7.5-1983

marked for identification.)

(Document handed to witness.)

16 Q. This is Exhibit 13. Was that sent to you by
 17 Mr. Tobin?

18 A. Yes.

19 Q. And did you find that of any relevance to
 20 any of your opinions in this case?

21 A. No.

22 Q. That takes care of that. That makes it
 23 easy. Do I understand correctly that the
 24 first time you reached an opinion that there

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1 might have been a problem with the interlock
 2 on the saw that Mr. Watson was using was
 3 after you received the videos about two
 4 weeks ago, and particularly the Swedish
 5 video?

6 A. Yes.

7 Q. Did you think at all one way or the other
 8 about the design of the interlock before
 9 that point in time?

10 A. Before that period of time I operated the
 11 interlock and it looked to me at the time
 12 that it would have been difficult to
 13 impossible to accidentally actuate the
 14 trigger, and especially in the way
 15 Mr. Watson had described what happened, I
 16 had envisioned the saw hanging down and as
 17 it hangs down why it pulls away from your
 18 hand. You come away from the interlock.

19 And frankly, the learning process
 20 and things gel slowly and when I saw the
 21 video and this gentleman who first he was
 22 tossing the saw, passing it from one hand to
 23 the other actuating it and then he held it
 24 hanging down and actuated it, and I said oh,

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1 my goodness, that's possible. I didn't
2 think it was possible.

3 I tried it. I found it very
4 difficult to do, almost impossible with my
5 bare hand, and I put a work glove on and I
6 found then it became possible to do it with
7 a saw hanging down. And then I had realized
8 with someone that handled this saw all the
9 time, he probably, it probably became second
10 nature to him to actuate it, and it may have
11 been instinctively in grasping the saw that
12 he did it or then in passing it from one
13 hand to the other the weight of the saw
14 caused the interlock button to be depressed.
15 And at that point I realized that this
16 interlock button is not in the right place
17 for safety.

18 Q. So, it wasn't that you didn't think about
19 the issue before?

20 A. It's hard to say. I can't say that I sat
21 down and wrote everything out and said what
22 do I think about and what don't I think
23 about. I looked at it. I saw it. I
24 recognized it was an interlock. It didn't

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1 -- it simply didn't occur to me that it
2 could be inadvertently actuated.

3 Q. Have you ever designed an interlock or
4 trigger lock for a power saw?

5 A. No.

6 Q. You've never done a design drawing or
7 developed a prototype for a trigger lock for
8 a power saw, have you?

9 A. No.

10 Q. And therefore, you haven't tested any
11 alternate design trigger lock or interlock
12 for a power saw, have you?

13 A. Other than for the purposes of this
14 deposition, I've done some mental design, of
15 course, saying what would I do, what do I
16 think would be a better interlock, a safer
17 interlock, and I don't need to actually put
18 pen to paper to do that. And I think there
19 are alternative ways of doing it that would
20 have prevented inadvertent operation.

21 Q. What alternative ways are there of doing it
22 that would have prevented an inadvertent
23 operation?

24 A. I am going to have to preface this by saying

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1 I haven't been hired to redesign the saw,
2 and in engineering designs you try an
3 approach. You experiment with it and you
4 test it on people. You see whether it works
5 or not. Then you redesign it and you refine
6 it, and what we're doing here is artificial
7 in the sense that all I'm going to be able
8 to give you is some two or three approaches
9 to what I would take, and then after working
10 with them, trying some prototypes, testing
11 them on people, they would either be
12 modified or discarded or what.

13 But number one, this is a heavy saw
14 and when you grasp it and hold it you need
15 to apply some force to the handle to be able
16 to control this weight. Therefore that
17 handle is not only to guide it when cutting.
18 It's also a handle that one uses to move the
19 saw around from one hand to the other and
20 carry it.

21 I wouldn't put the interlock
22 unprotected as it is in that handle, because
23 in holding the weight of the saw, depending
24 upon how one holds it, if you tip the saw

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1 like this and the weight is on the
2 interlock. So, I number one, would move the
3 interlock out of the internal cavity of the
4 handle. I would probably start by putting
5 it up on top of the handle, so that it could
6 be reached by the thumb and I would have put
7 some barriers around the side of it. Maybe
8 it's a slide switch, a slide push switch, so
9 that one has to kind of awkwardly reach up
10 front to get it and then put your hand back
11 into a comfortable position for holding the
12 trigger down.

13 No. 2, I might have put a barrier
14 around, similar to the interlock that's
15 there now, except not leaving it exposed as
16 it is, but having it in kind of a barrier
17 area, so one has to use the tip of one's
18 finger to actuate it, and it would have to
19 be done in such a way that if you bumped
20 into it you would be bumping into the
21 barrier rather than just the point of the
22 trigger.

23 And the third alternative would be
24 something that required a simultaneous press

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1 of two fingers in another area. Once that
 2 was done and the trigger was pulled you
 3 could release it. It's in a sense analogous
 4 to the two-handed operation that's needed on
 5 punch presses.

6 Q. I'm sorry.

7 A. Those are three approaches that I would
 8 start with and what would come out
 9 eventually might look just like that or it
 10 might look different depending upon what the
 11 results were.

12 Q. So, it would be fair to say that these are
 13 concepts or approaches that you've thought
 14 about, but haven't actually designed out or
 15 tested?

16 A. That's correct.

17 Q. Have you discussed with any other engineers
 18 these concepts about an alternate design
 19 trigger lock?

20 A. No.

21 Q. You can't recall ever using yourself a power
 22 cutter with such an alternate design trigger
 23 lock as you sit here now, can you?

24 A. I can't recall. I don't know whether the

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1 saw actually did use, had or didn't have
 2 such an interlock or any interlock. I just
 3 don't know.

4 MR. BARRY: Can we take just a few
 5 minutes and then we'll move on to one other
 6 topic and then we will be finished.

7 (Discussion off the record.)

8 (Brief recess.)

9 Q. Mr. Wilder, I think you may have said this
 10 already, but would it be accurate to say
 11 that your opinion about the trigger lock was
 12 developed in connection with and for
 13 purposes of this case?

14 A. The comments that I have made about this
 15 particular trigger lock, but I would have
 16 had the same thoughts about another device
 17 having a trigger lock if that was implicated
 18 in the accident.

19 Q. Right, but, I mean, you came to that opinion
 20 about this trigger lock in connection with
 21 your work on this case?

22 A. This trigger lock in connection with this
 23 work on this case.

24 Q. Correct.

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1 A. But I have looked into and given opinions on
 2 other two-handed and other safety devices on
 3 other machines. So, I've considered how one
 4 can protect against inadvertent operation in
 5 other matters, not just in this matter.

6 Q. Had you ever, before you came to the opinion
 7 about the trigger lock on Mr. Watson's saw,
 8 expressed the opinion that a trigger lock on
 9 any other portable abrasive power cutter,
 10 using your definition of power cutter, was
 11 defective?

12 A. No.

13 Q. Now, in your report that we marked Exhibit 1
 14 you ---

15 A. I'm sorry, let me clarify that a little bit,
 16 because it goes way back, and it's not a
 17 power cutter, but if you -- are you
 18 restricting your question to a power cutter?

19 Q. It was about power cutters, yes.

20 A. Then my answer stands.

21 Q. Was there another case in which you had
 22 a ---

23 A. It wasn't a power cutter.

24 Q. You expressed some opinions about warnings

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1 in your report, correct?

2 A. I would have to look at them. I don't
 3 remember exactly what I might have said.
 4 Yes, I did.

5 Q. I think it's on the last page.

6 A. Last page, yes.

7 Q. You say that, "The K2300 EL incorporated
 8 neither effective guarding nor adequate
 9 operator safety warnings"?

10 A. Yes.

11 Q. I don't want to go back on guarding. I
 12 think we've covered that. I think you told
 13 me that you don't have an opinion that the
 14 saw was defective for reason of inadequate
 15 guarding, correct?

16 A. That's correct. We were talking about a
 17 lower blade guard, and what I meant here in
 18 terms of guarding also included a means --
 19 at the time I believe I was also considering
 20 a means to prevent inadvertent injury or
 21 operation, and I can't be sure at this point
 22 what I had in mind then, but I was saying
 23 that the saw was not guarded. I didn't say
 24 it had to be guarded for this use. I said

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1 A. Essentially all of it. I mean other than
2 investments and things like that.
3 Q. Earned income?
4 A. Earned income.

5 MR. BARRY: I think that's all I
6 have.

7 MR. TOBIN: I have got to ask a
8 couple.

9 CROSS-EXAMINATION

10 BY MR. TOBIN:

11 Q. I have a few questions for you just for
12 clarification. A little bit earlier you
13 talked about different types of interlock
14 that could be incorporated into this saw.
15 Do you recall that?

16 A. Yes.

17 Q. The different types of interlocks you
18 described, are they used on power tools and
19 devices in the current market?

20 A. There are many interlocks used on power
21 tools in today's market.

22 Q. You talked about interlocks that are
23 recessed or guarded?

24 A. Yes.

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1 Q. Are there products on the market today that
2 use such interlocks?

3 A. I've seen them. I can't specifically pull
4 one out right now to describe to you.

5 Q. But it's well accepted in the industry that
6 they're used?

7 MR. BARRY: Objection to form.

8 A. I believe so, yes.

9 Q. Mr. Wilder, can you conclude to a reasonable
10 degree of engineering certainty that the
11 presence of a blade brake and an effective
12 interlock would have prevented Mr. Watson's
13 injury?

14 A. Would have prevented or mitigated it if both
15 of those features were part of his saw.

16 Q. Can you explain that, please?

17 A. Well, I believe since we don't know or I
18 don't know precisely what happened, how much
19 of his injury was caused by coasting versus
20 how much of it might have been caused by a
21 powered on blade, since we don't know -- and
22 how much it might have been caused by a
23 coasting blade, the presence of both of
24 those safety devices, a blade brake and an

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1 interlock in my opinion would have either
2 prevented or mitigated this injury.
3 Q. Mr. Wilder, can you conclude to a reasonable
4 degree of engineering certainty that
5 Mr. Watson's injury likely took place when
6 he was near the bottom of the ladder?

7 A. Yes.

8 Q. Can you explain that conclusion for me,
9 please?

10 A. Well, yes. He climbed down the ladder
11 several steps, and if he had been injured
12 halfway up the ladder I doubt very much
13 whether he would have been able to
14 successfully negotiate the rest of the
15 ladder, and he certainly wouldn't have
16 testified that when and as he got to the
17 bottom the injury occurred. He would have
18 said as I was going down the ladder or
19 something like that, but he specifically
20 testified that his foot was either on the
21 ground or just about on the ground and
22 that's when he felt the injury, became aware
23 of the injury.

24 Q. A little bit earlier we talked about
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1 warnings. Is there a warning on the device
2 itself regarding the danger of a coasting
3 blade?

4 A. No.

5 Q. Should there be a warning on the device
6 itself?

7 A. Well, again, my opinion is that warnings
8 were a second line of defense. First line
9 of defense is to design a machine which is
10 safe in and of itself as far as it can be
11 done. A warning might or might not have
12 been helpful. I can't tell you that.

13 Q. Is there any kind of a warning on the device
14 regarding inadvertent activation?

15 A. Not that I saw.

16 Q. Finally, is there a warning on the device or
17 even in the owner's manual regarding whether
18 this particular device should be used while
19 climbing a ladder?

20 A. I would have to look through that. I don't
21 believe it says anything about that in
22 there, but I would have to look through the
23 manual again. In any event, people in the
24 real world have to use ladders to sometimes

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